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No. 9-345A043.  
Date DEC 11 1979  
Fee \$ 50.00  
ICC Washington, D. C.

1500 Alamo National Building  
San Antonio, Texas 78205  
(512) 226-4211

11186

RECORDATION NO. .... Filed 1425 December 6, 1979

DEC 11 1979 - 12 55 PM

INTERSTATE COMMERCE COMMISSION

CERTIFIED MAIL #337122  
RETURN RECEIPT REQUESTED

Secretary of Interstate Commerce Commission  
Washington, D.C. 20423

Re: Filing Pursuant to 49 U.S.C.  
11303 of Documents Relating  
to Railroad Cars

Dear Sir:

Pursuant to 49 U.S.C. 11303, enclosed for filing and recordation are the original executed Railroad Car Lease Agreement dated November 19, 1979, between RailTex, Inc., a Texas corporation, as Lessee, and San Miguel Electric Cooperative, Inc., a Texas corporation, as Lessor, together with two certified true copies thereof.

Also enclosed is our check in the amount of \$50.00 in payment of your recordation fees.

The address of RailTex, Inc., is 4901 Broadway, Suite 206, San Antonio, Texas 78209, and the address of San Miguel Electric Cooperative, Inc., is P. O. Box 280, Jourdan, Texas 78026. The Railroad Car Lease Agreement relates to 42 new rapid discharge, automatic door, self-cleaning bottom dump rail cars manufactured by Ortner Freight Car Company with AAR mechanical designation No. HTS, AAR car-type code K340, bearing serial numbers SMEX 1 through 42, both inclusive.

INTERSTATE  
COMMERCE COMMISSION

DEC 10 1979

2  
ADMINISTRATIVE SERVICES  
MAIL ROOM

*Matthews, Nowlin, Macfarlane & Barrett*

Secretary of ICC

Page 2

Dec. 6, 1979

After filing and stamping, please return the enclosed original and one copy thereof to this law firm.

Should you have any questions or need further information with respect to this matter, please contact the undersigned by collect telephone call at (512) 226-4211.

Thanking you for your cooperation, we are

Very truly yours,

MATTHEWS, NOWLIN, MACFARLANE & BARRETT

By

*Lionel R. Fuller*

Lionel R. Fuller

LRF:fm

Encl.

# Interstate Commerce Commission

Washington, D.C. 20423

12/31/79

## OFFICE OF THE SECRETARY

Lionel. R. Fuller  
Matthews, Nowlin, Macfarlane & Barrett  
1500 Alamo Natl. Building  
San Antonio, Texas 18205

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/11/79 at 12:55pm, and assigned re-recording number(s). 11186

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

CERTIFICATE OF NOTARY PUBLIC  
PURSUANT TO 49 C.F.R., §1116.3(b)

11186  
RECORDATION NO. .... Filed 1425  
DEC 11 1979 2 10 PM  
INTERSTATE COMMERCE COMMISSION

STATE OF TEXAS       X  
                              X  
COUNTY OF BEXAR     X

I, the undersigned Notary Public in and for Bexar County, Texas, do hereby certify that I have compared the attached copy of the Railroad Car Lease Agreement dated November 19, 1979, executed by San Miguel Electric Cooperative, Inc., a Texas corporation, as Lessor, and RailTex, Inc., a Texas corporation, as Lessee, with the original document and that it is a true and correct copy thereof in all respects.

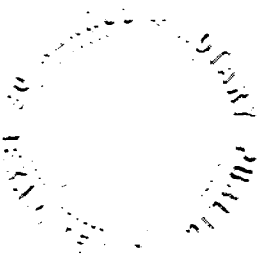
Dated: December 6, 1979.

Deborah S. Nemecek  
Notary Public in and for Bexar County,  
Texas

My Commission Expires:

June 6, 1981

DEBORAH S. NEMEC  
Notary Public, Bexar County, Texas



RAILROAD CAR LEASE AGREEMENT

THIS AGREEMENT, No. SM-1, made and entered into Nov. 19, 19 79, by and between San Miguel Electric Cooperative, Inc., a Texas corporation with its principal office and place of business in Jourdanton, Texas, (herein called "LESSOR") and Railtex, Inc., a Texas corporation, (herein called "LESSEE").

WITNESSETH:

Description  
of Leased  
Cars:

1. LESSOR agrees to furnish to LESSEE, and LESSEE agrees to rent from LESSOR, the railroad cars shown on the Rider attached hereto and made a part of hereof, and such additional Riders as may be added hereto from time to time by agreement of the parties and signed by their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, covered thereby including such facts as: number of cars, car initials and numbers, the Association of American Railroads ("AAR") or Interstate Commerce Commission ("ICC") specifications, cubic capacity, truck capacity, delivery point, rental, term throughout which the cars shall remain in LESSEE's service, and other pertinent information that may be desired by both parties.

Use of  
Cars:

2. LESSEE agrees to use said cars under the following restrictions:

(a) The cars will be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated, and government agencies.

(b) At the expiration or termination of the rental term of the particular Rider applicable to each such car described in such Rider, LESSEE shall cause said cars to be returned to LESSOR at Campbellton, Texas, or to such other point designated by LESSOR with LESSEE to pay all cost.

(c) The cars shall be returned to LESSOR in the same, or as good, condition in which they were delivered to LESSEE except for ordinary wear and tear. Any dispute on car condition will be resolved through binding arbitration, with arbitrator to be qualified railroad car inspector mutually agreeable to both parties.

(d) The cars will not be altered by LESSEE in any way without prior written approval of LESSOR.

(e) Mechanical unloading assistance devices, such as a car shaker, shall be operated only

for that period of time necessary to dislodge material from the car. Operation beyond the time the material is dislodged from the car shall constitute unnecessary abuse by LESSEE of the car.

(f) LESSEE shall notify LESSOR in writing within five (5) days of each change in routing, origin or destination of the car so as to permit LESSOR to monitor individual car movements. This requirement is not to be construed as limiting in any way movements of the cars other than as set forth in paragraphs 2(a) and 2(h) hereof.

(g) The cars are intended for use in carrying aggregate type products, with individual rock segments not to exceed twelve (12) inches in cross section. The use of these cars for any other purpose is not permitted without prior written approval of LESSOR.

(h) The cars will be operated only within the United States of America.

Rent:

3. LESSEE agrees to pay LESSOR the monthly rental stated in the Rider covering said cars from the date each car is delivered as specified in the Rider, and until the cars are delivered to LESSOR upon expiration of the rental term specified in the Rider applicable to such car. Such rentals shall be paid to LESSOR in Jourdanton, Texas, or

such other place as LESSOR may hereafter direct in writing. Payment will be made by LESSEE within fifteen (15) days of end of month for which "rent" (including mileage) is earned.

Mileage:

4. LESSEE shall collect from SUBLESSEE 4.2 cents per mile for each mile the car is operated by SUBLESSEE. All mileage funds will be paid to LESSOR with "rent" payment, after deducting that amount expended by LESSEE to pay for actual "fair wear and tear" maintenance expenses.

Term of  
Lease:

5. This Agreement shall be effective as of the date first set forth hereinabove and shall expire upon expiration of the rental term of the last car, or cars, covered hereunder. The rental term for each car shall be as shown in the Rider covering such car.

Repair and  
Maintenance:

6. LESSEE agrees to pay all costs of maintenance and repair to the cars described in the Rider, in accordance with paragraph 4. Repairs required due to acts or omissions of LESSEE, shipper, consignee, agent or SUBLESSEE shall be paid by LESSEE or as otherwise provided below in this paragraph. LESSEE shall make all contractual arrangements for all repairs, notwithstanding who is responsible for the costs thereof. LESSEE shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. If any car is completely destroyed or in the opinion of LESSOR such car's physical condition is such that it cannot be economically repaired to be operated in railroad service,



Provisions of Paragraph 20, "Destroyed Car Replacement" will apply. When damaged cars have been forwarded to a shop for repair, the excess mileage incurred by deviation from normal routing earned by such car to and from the shop shall be retained by LESSOR.

Indemnity:

7. LESSEE will indemnify LESSOR against any loss, damage, claim, expense (including attorney's fees and expenses of litigation) or injury imposed on, incurred by, or asserted against LESSOR arising, directly or indirectly, out of LESSEE's, its consignee's, agent's, shipper's, or any sublessee's use, lease, possession or operation of the cars occurring during the term of this Lease, or by the contents of such cars, however occurring, except any loss, liability, claim, damage or expense which is directly attributable to the fault or neglect of LESSOR, or for which a railroad or railroads have assumed full responsibility and satisfy such responsibility. All indemnities contained in the Agreement shall survive the termination hereof, however same shall occur.

Insurance:

8. LESSEE shall, at its own cost and expense, with respect to each car at all times maintain and furnish LESSOR with evidence of insurance against all risks assumed

by LESSEE under paragraph 7 hereof (including, without limitation, physical damage insurance and liability insurance) protecting LESSOR, in such companies, in such amounts, and with such endorsements as LESSOR shall from time to time request. LESSEE's obligation to maintain insurance with respect to each car shall continue until the lease term thereof terminated and, if such car is required hereunder to be returned to LESSOR, until such return. LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the cars.

Additional  
Charges by  
Railroad:

9. LESSEE agrees to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars during the term hereof shall result in any charges being made against LESSOR by any such railroad, LESSEE shall pay LESSOR for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. LESSEE agrees to indemnify LESSOR against same and shall be liable for any switching, demurrage, track storage or detention charge imposed on any of the cars during the term hereof.

Right of  
Entry:

10. LESSOR shall have the right to enter the property of LESSEE or its SUBLESSEE, at LESSOR's own cost, and at all reasonable times for the purpose of making car inspections and repairs, and for inspecting records of LESSEE.

Reports:

11. LESSEE shall collect and retain all data necessary for making mileage, per diem and "Bad Order Status" calculations. The railroad reports will serve as prima facie evidence of the facts reported therein.

Payment  
of Taxes:

12. During the term of this Agreement, LESSEE shall, in addition to the rentals specified, pay all sales, use, rental and excise taxes, personal property taxes, assessment and other governmental charges, whatsoever, whether payable by LESSOR or LESSEE, on or relating to the cars leased hereunder. LESSEE shall be under no obligation to pay any such tax so long as it is being contested in good faith and by appropriate administrative or legal proceedings and any expense incurred by LESSOR concurs with respect to contesting the applicability of such sales tax, rental tax and use tax to this Agreement shall be for the account of LESSEE.

Liens:

13. LESSEE shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect LESSOR's title.

Marking  
of Cars:

14. LESSEE shall keep all cars subject to this Lease free of any markings which might be interpreted as a claim of ownership. LESSEE shall have right to

change the identifying numbers, upon thirty (30) day advance notice to LESSOR.

Subleasing:

15. LESSEE will have exclusive right to sublease said cars. LESSEE will notify LESSOR of proposed sublease and LESSOR has veto power of sublease within thirty (30) days of receipt of written copy. This veto right can be exercised only if the proposed sublease rent revenue is less than \$519.00 per month or if proposed use of the car can be shown as significantly detrimental to the long term life of the car.

Remedies:

16. Upon the happening of any of the events of default as hereinafter defined, the LESSOR or its assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, wherever same may be found, and, at the election of the LESSOR or its assignee as the case may be declare the Agreement terminated, in which event all rights of the parties hereunder shall cease except only the obligation of LESSEE to pay accrued rentals and other charges to the date of retaking.

Default:

17. The happening of any of the following events shall be considered an "event of default" :

- (a) Nonpayment of LESSEE within thirty (30) days after the same becomes due of any installment of rental.
- (b) Failure of LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within thirty (30) days after receipt of written notice from

LESSOR demanding compliance therewith and performance thereof.

(c) The appointment of a receiver or trustee in bankruptcy for LESSEE or for any of its property and the failure by such receiver or trustee to adopt and assume and agree to perform the obligations of LESSEE hereunder within thrity (30) days after such appointment.

Filing:

18. LESSEE intends to cause this Lease to be filed and recorded with the ICC in accordance with Section 20 (c) of the Interstate Commerce Commission Act. LESSEE shall from time to time do and perform any other act, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law, or requested by LESSOR, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement, and LESSEE will promptly furnish to LESSOR certificates or other evidences of all such filing, registering and recording in form satisfactory to LESSOR. LESSOR shall promptly reimburse LESSEE for any out-of-pocket expenses it may so incur.

Inspection  
of Car:

19. Each of the cars shall be subject to joint inspection or LESSOR and LESSEE before delivery; and the acceptance thereof by LESSEE shall be conclusive evidence (i) of the fit and suitable condition of such car for the purpose of transporting any commodities then and thereafter loaded therein and (ii) that it is one of the cars described in the Riders. At termination of lease a joint inspection

will be made; and acceptance thereof by LESSOR shall be conclusive evidence (i) of the fit and suitable condition of such car for the purpose of transporting any commodities then, and thereafter loaded therein and (ii) that it is one of the cars described in the Riders

Destroyed  
Car  
Replacement:

20. Should any of those cars listed in the Rider be completely destroyed, or if the physical condition of any car shall become such that such car cannot economically be repaired to be operated in railroad service, then LESSEE will replace such cars with an equal number of cars of design suitable to LESSOR (REPLACEMENT CARS). Replacement cars will come from following sources (At LESSORS option): (i) Transfer of manufacturers delivery positions of cars currently held by LESSEE with Ortner Freight Car Company to LESSOR (ii) Sale of cars owned by LESSEE to LESSOR. Sale price will be the original purchase price of the car to the LESSEE. These cars would be those available from (a) the next delivery position held by LESSEE with Ortner Freight Car Co. (b) Other cars currently under lease to the SUBLESSEE of the LESSOR'S cars (provisions for such replacement would be included in SUBLESSEE lease) or (c) The next available cars released from another lease of LESSEE. Should LESSOR later acquire cars equal or superior to those destroyed, LESSOR shall sell to LESSEE the "replacement cars" at the original purchase price of the car to the LESSEE. Such return to LESSEE of replacement cars shall not occur after four (4) years from date of

original sale by LESSEE to LESSOR.

Miscellaneous:            21.        It is mutually agreed that the time of payment of rentals is of the essence of this Agreement and that this Agreement and any Rider now and hereafter entered into is subject and subordinate to any Lease Agreement from the owners of the cars subleased hereunder, Security Agreement or Conditional Sale Agreement on the cars heretofore or hereafter leased hereunder and to the rights of any Trustee under any Equipment Trust heretofore or hereafter established by LESSOR.

Notice:                    22.        All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given if given in writing and delivered personally or sent by registered or certified mail, return receipt requested. The respective addresses for notice shall be the addresses of the parties given in writing at the execution of this Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

Governing  
Law:                        23.        The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas, in which state it has been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective corporate officers and duly attested, as to the date first above written.

SAN MIGUEL ELECTRIC COOPERATIVE, INC.  
(LESSOR)

(Corporate Seal)

By Ernest McElreath  
Title

ATTEST:

Robert E. Sullivan  
Secretary

RAILTEX, INC. (LESSEE)

(Corporate Seal)

ATTEST:

By Ernest M. Alon  
President

James L. Flohr  
Secretary



RAILTEX, INC.

RIDER NO. 001

To Master Agreement No. SM-1

It is hereby agreed that effective Nov. 19 19 79, this Rider shall become a part of Master Car Agreement No. SM-1, between RailTex, Inc. and San Miguel Electric Cooperative, Inc., dated Nov. 19 19 79, and the cars described herein shall be placed in service subject to the terms set forth below:

CAR INITIAL NUMBERS:	SMEX 1 thru 41 both inclusive
CAR OWNER MARKS:	San Miguel Electric Cooperative, Inc.
CLASS OF CAR:	HTS/K340
NUMBER OF CARS:	Forty Two (42)
CAPACITY OF CARS:	100 Tons Nominal - 2200 cubic feet.
COMMODITY LIMITATION:	Free flowing aggregate passing through 12" screen.
DELIVERY POINT:	San Miguel Plant or Covington, Kentucky
TERM:	60 Day Cancellation notice by either party, with actual date of termination not to occur before May 1, 1980.
CERTIFICATION OF INSPECTION:	Exhibit "A" attached hereto and made a part hereof.
TERMS OF RENT:	All rental revenue from any sublease which RAILTEX will arrange, less 15%, plus mileage (paragraph 4 of Master Agreement)
DELIVERY:	RailTex agrees to pay all transportation expense for cars not yet shipped from Covington, KY. at date of lease, and any storage costs associated with undelivered cars. RailTex agrees to pay all transportation expense on all other cars of this Rider from Campbellton, Texas which will be necessary to place cars in SUBLEASE service

(SEAL)  
ATTEST:

Bobby E. Sullivan

SAN MIGUEL ELECTRIC COOPERATIVE, INC. (LESSOR)

BY:

Edward J. McCallister  
(General Manager)

(SEAL)

ATTEST:

Sanct L. Holm

RAILTEX, INC. (LESSEE)

BY

Bruce M. Holm President

STATE OF TEXAS

COUNTY OF BEXAS

BEFORE ME, the undersigned authority, on this day personally appeared Bruce M. Flehr, President of RailTex, Inc. a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said company.

Given under my hand and seal of office, this 19<sup>th</sup> day of Nov., 1979.

Randal M. Gusting  
Notary Public in and for  
Bexar County, Texas

My Commission Expires:

5-1-81

STATE OF Texas

COUNTY OF Atascosa

BEFORE ME, the undersigned authority, on this day personally appeared Finest I. Orplschleger, General Manager of San Miguel Electric Cooperative, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said company.

Given under my hand and seal of office, this 21<sup>st</sup> day of November, 1979.

Paul C. Cooper  
Notary Public in and for  
Atascosa County, Texas

My Commission Expires:

September 27, 1980